

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21031 Ventura Blvd., Suite 340
Woodland Hills, CA 91364
Phone: 323-306-4234
Fax: 866-633-0228
tfriedman@toddfllaw.com

Zachary Crosner (SBN 272295)
CROSNER LEGAL, P.C.
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210
Phone: 855-976-9228
zach@crosnerlegal.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARK GONZALEZ, individually and on)	Case No.
behalf of all others similarly situated,)	
)	<u>CLASS ACTION COMPLAINT</u>
Plaintiff,)	
)	COMPLAINT FOR DAMAGES
vs.)	AND INJUNCTIVE RELIEF
)	PURSUANT TO THE
STYLEWORKS DESIGN GROUP, INC., and)	TELEPHONE CONSUMER
DOES 1-10,)	PROTECTION ACT, 47 U.S.C. §
)	227, ET SEQ.
Defendant(s).)	JURY TRIAL DEMANDED
)	
)	
)	

INTRODUCTION

1. MARK GONZALEZ (“Plaintiff”) bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of STYLEWORKS DESIGN GROUP, INC. (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.,

1 (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon
2 personal knowledge as to himself and his own acts and experiences, and, as to all
3 other matters, upon information and belief, including investigation conducted by
4 their attorneys.

5 2. The TCPA was designed to prevent calls and messages like the ones
6 described within this complaint, and to protect the privacy of citizens like Plaintiff.
7 “Voluminous consumer complaints about abuses of telephone technology – for
8 example, computerized calls dispatched to private homes – prompted Congress to
9 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

10 3. In enacting the TCPA, Congress intended to give consumers a choice
11 as to how creditors and telemarketers may call them, and made specific findings
12 that “[t]echnologies that might allow consumers to avoid receiving such calls are
13 not universally available, are costly, are unlikely to be enforced, or place an
14 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward
15 this end, Congress found that
16

17 [b]anning such automated or prerecorded telephone calls to the home,
18 except when the receiving party consents to receiving the call or when
19 such calls are necessary in an emergency situation affecting the health
20 and safety of the consumer, is the only effective means of protecting
21 telephone consumers from this nuisance and privacy invasion.

22 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
23 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
24 purpose).

25 4. Congress also specifically found that “the evidence presented to the
26 Congress indicates that automated or prerecorded calls are a nuisance and an
27 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,
28 *Mims*, 132 S. Ct. at 744.

1 5. In a recent decision, the Supreme Court interpreted the term
2 “automatic telephone dialing system” and held that “[t]o qualify as an ‘automatic
3 telephone dialing system,’ a device must have the capacity either to store a
4 telephone number using a random or sequential generator *or* to produce a telephone
5 number using a random or sequential number generator.” *Facebook, Inc. v. Duguid*,
6 141 S.Ct. 1163 (2021) (emphasis added).

7 6. In *Duguid*, the Supreme Court provided an example of such systems,
8 stating: “For instance, an autodialer might use a random number generator to
9 determine the order in which to pick phone numbers from a preproduced list. It
10 would then store those numbers to be dialed at a later time.” *Id.* at 1171-72 fn. 7.

11 7. Further, both *Duguid* and the legislative history of the TCPA are clear
12 that the original focus on prerecorded voice technology prohibition was the fact
13 that such communications involved agentless calls, not on the question of whether
14 a literal voice was used during those agentless calls. *See* Hearing Before the
15 Subcommittee on Communications of the Committee on Commerce, Science and
16 Transportation, United States Senate One Hundred Second Congress First Session
17 July 24, 1992, Testimony of Robert Bulmash and Steve Hamm at pg 11; 7 FCC
18 Rcd. 8752 (F.C.C. September 17, 1992).

19 8. The Sixth Circuit has also recognized this distinction: “Congress drew
20 an explicit distinction between ‘automated telephone calls that deliver an artificial
21 or prerecorded voice message’ on the one hand and ‘calls place by ‘live’ persons’
22 on the other.” *Ashland Hosp. Corp. v. Serv. Employees Int’l Union, Dist. 1199*
23 *WV/KY/OH*, 708 F.3d 737,743 (6th Cir. 2013).

24 9. Similarly, the FTC has observed that “prerecorded calls are by their
25 very nature one-sided conversations, and if there is no opportunity for consumers
26 to ask questions, offers may not be sufficiently clear for consumers to make
27 informed choices before pressing a button or saying yes to make a purchase.” 73
28

1 FR 51164-01, 51167 (Aug. 29, 2008).

2 **JURISDICTION AND VENUE**

3 10. Jurisdiction is proper under 28 U.S.C. § 1331 because this action
4 arises under a federal statute, namely the Telephone Consumer Protection Act, 47
5 U.S.C. § 227, *et seq.*

6 11. Venue is proper in the United States District Court for the Northern
7 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
8 Defendants are subject to personal jurisdiction in the County of San Francisco,
9 State of California.

10 **PARTIES**

11 12. Plaintiff is, and at all times mentioned herein was, a citizen and
12 resident of the State of California. Plaintiff is, and at all times mentioned herein
13 was, a “person” as defined by 47 U.S.C. § 153 (39). Plaintiff was physically in
14 California at the time he received the alleged text messages from Defendant.

15 13. Plaintiff is informed and believes, and thereon alleges, that Defendant
16 is a limited liability company of the state of California. Defendant, and all of its
17 agents, are and at all times mentioned herein were “persons,” as defined by 47
18 U.S.C. § 153 (39). Plaintiff alleges that at all times relevant herein Defendant
19 conducted business in the State of California and in the County of San Francisco,
20 and within this judicial district.

21 **FACTUAL ALLEGATIONS**

22 14. At all times relevant, Plaintiff was a citizen of the County of San
23 Francisco, State of California. Plaintiff is, and at all times mentioned herein was,
24 a “person” as defined by 47 U.S.C. § 153 (39).

25 15. Defendants are, and at all times mentioned herein were, “persons,” as
26 defined by 47 U.S.C. § 153 (39).
27
28

1 16. At all times relevant Defendants conducted business in the State of
2 California and in the County of San Francisco, within this judicial district.

3 17. On May 5 2021, Plaintiff received a text message from Defendants on
4 his cellular telephone number ending in -6991

5 18. Specifically, the text message read:

6
7 Forrest and Harold: Time for a WALLET UPGRADE! Get
8 20% off sitewide & FREE SHIPPING – TODAY ONLY!
9 <https://forrestandharold.attn.tv/I/13F/GM3T3>

10 19. Defendant did not have Plaintiff’s prior express consent to contact him
11 on his cellular phone.

12 20. Based on the content and format of these text messages, Plaintiff
13 alleges that they were sent via Defendant’s SMS Blasting Platform, i.e., an
14 “automatic telephone dialing system,” (“ATDS”) as defined by 47 U.S.C. § 227
15 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

16 21. The text message sent to Plaintiff’s cellular telephone was not sent by
17 a live agent and thus created a one-sided conversation in which Plaintiff could not
18 receive a response to his questions and/or concerns. The text message also was sent
19 in an automated fashion as a result of computerized campaigns that were pre-
20 programmed in advance to send messages out to large groups of consumers all at
21 once, either sequentially or via algorithmic dialing, i.e. in an automated fashion by
22 a computer.

23 22. In Merriam Webster’s Dictionary, “voice” is defined as “an
24 instrument or medium of expression.” It defines “artificial” as “humanly
25 contrived...often on a natural model : MAN-MADE” and “lacking in natural or
26 spontaneous quality.”

27 23. The messages sent to Plaintiff by Defendant using the SMS blasting
28 platform employed a text message as an instrument or medium of expression to

1 deliver an automatic message drafted in advance of being sent, i.e. that of an SMS
2 message, to convey a telemarketing communication to Plaintiff. SMS blasting
3 platforms are man-made humanly contrived programs which allow companies to
4 blast out such messages via non-spontaneous methods, i.e. automated methods
5 similar to that of an assembly line in a factory. Such SMS blasting devices are
6 incapable of spontaneity, as they must be programmed by the operator to
7 automatically send messages out, *en masse*, pursuant to preprogrammed
8 parameters.

9
10 24. Accordingly, Defendant's messages utilized an "artificial voice" as
11 prohibited by 47 U.S.C. § 227(b)(1)(A).

12 25. In Merriam Webster's Dictionary, "prerecorded" is defined as
13 "recorded in advance." "Recorded" is defined as "to set down in writing." The
14 text message sent to Plaintiff's cellular telephone via an SMS blasting platform was
15 set down in writing in advance by Defendant, whose employees wrote out the
16 standard automated messages that were to be sent to Plaintiff and other class
17 members, and by way of preprogrammed SMS blasting, entered the prerecorded
18 message into the SMS Blasting platform, and thereafter sent these messages
19 pursuant to scheduled blasts that were programmed by Defendant. Thus, Defendant
20 employed a text message as an instrument or medium of expression to deliver a
21 prerecorded message drafted in advance of being sent.

22 26. Thus, Defendant's messages utilized a "prerecorded voice" as
23 prohibited by 47 U.S.C. § 227(b)(1)(A).

24 27. The telephone number that Defendant, or their agent texted were
25 assigned to a cellular telephone service for which Plaintiff incur charges for
26 incoming texts pursuant to 47 U.S.C. § 227 (b)(1).

27 28. These text messages constituted calls that were not for emergency
28 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

1 29. Plaintiff was never a customer of Defendant and never provided his
2 cellular telephone number to Defendant for any reason whatsoever. Accordingly,
3 Defendant and their agents never received Plaintiff's prior express consent to
4 receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

5 30. Such text messages constitute solicitation calls pursuant to 47 C.F.R.
6 § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

7 31. These text messages by Defendant, or its agents, violated 47 U.S.C. §
8 227(b)(1).

9 **CLASS ACTION ALLEGATIONS**

10 32. Plaintiff Plaintiff brings this action on behalf of himself and on behalf
11 of and all others similarly situated, as a member of the proposed Class.

12 33. Plaintiff represents, and is a member of, the Class, defined as follows:
13 all persons within the United States who received any unsolicited text messages
14 sent using an ATDS or an artificial or prerecorded voice from Defendant, which
15 text message was not made for emergency purposes or with the recipient's prior
16 express consent within the four years prior to the filing of the Complaint through
17 the date of class certification.

18 34. Defendant and its employees or agents are excluded from the Class.
19 Plaintiff does not know the number of members in the Class, but believes the Class
20 members number in the thousands, if not more. Thus, this matter should be
21 certified as a Class action to assist in the expeditious litigation of this matter.

22 35. This suit seeks only damages and injunctive relief for recovery of
23 economic injury on behalf of the Class, and it expressly is not intended to request
24 any recovery for personal injury and claims related thereto. Plaintiff reserves the
25 right to expand the Class definition to seek recovery on behalf of additional persons
26 as warranted as facts are learned in further investigation and discovery.

27 36. The joinder of the Class members is impractical and the disposition of
28 their claims in the Class action will provide substantial benefits both to the parties

1 and to the court. The Class can be identified through Defendant's records or
2 Defendant's agents' records.

3 37. Plaintiff and members of the Class were harmed by the acts of
4 Defendant in at least the following ways: Defendant, either directly or through their
5 agents, illegally contacted Plaintiff and the Class members via their cellular
6 telephones by using marketing and text messages, thereby causing Plaintiff and the
7 Class members to incur certain cellular telephone charges or reduce cellular
8 telephone time for which Plaintiff and the Class members previously paid, and
9 invading the privacy of said Plaintiff and the Class members. Plaintiff and the
10 Class members were damaged thereby.

11 38. There is a well-defined community of interest in the questions of law
12 and fact involved affecting the Class members. The questions of law and fact
13 common to the Class predominate over questions which may affect individual
14 Class members, including the following:

- 15
- 16 a) Whether, within the four years prior to the filing of this Complaint
17 through the date of class certification, Defendant or their agents sent
18 any text messages (other than a message made for emergency
19 purposes or made with the prior express consent of the called party)
20 to an Class member using any automatic dialing system or artificial or
21 prerecorded voice to any telephone number assigned to a cellular
22 phone service;
23 b) Whether Plaintiff and the Class members were damaged thereby, and
24 the extent of damages for such violation; and
25 c) Whether Defendant and their agents should be enjoined from
26 engaging in such conduct in the future.
27

28 39. As a person that received at least one solicitation text message without
Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the
Class. Plaintiff will fairly and adequately represent and protect the interests of the
Class in that Plaintiff has no interests antagonistic to any member of the Class.

1 40. Plaintiff and the members of the Class have suffered irreparable harm
2 as a result of the Defendant's unlawful and wrongful conduct. Absent a class
3 action, the Class will continue to face the potential for irreparable harm. In
4 addition, these violations of law will be allowed to proceed without remedy and
5 Defendant will likely continue such illegal conduct. Because of the size of the
6 individual member's claims, few, if any, members of the Class could afford to seek
7 legal redress for the wrongs complained of herein.

8 41. Plaintiff has retained counsel experienced in handling class action
9 claims and claims involving violations of the Telephone Consumer Protection Act.

10 42. A class action is a superior method for the fair and efficient
11 adjudication of this controversy. Class-wide damages are essential to induce
12 Defendant to comply with federal and California law. The interest of the Class
13 members in individually controlling the prosecution of separate claims against
14 Defendant are small because the maximum statutory damages in an individual
15 action for violation of privacy are minimal. Management of these claims is likely
16 to present significantly fewer difficulties than those presented in many class claims.

17 43. Defendant has acted on grounds generally applicable to the Class,
18 thereby making appropriate final injunctive relief and corresponding declaratory
19 relief with respect to the Class as a whole.

20
21 **FIRST CAUSE OF ACTION**
22 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
23 **47 U.S.C. § 227(B)**

24 44. Plaintiff incorporates by reference all of the above paragraphs of this
25 Complaint as though fully stated herein.

26 45. The foregoing acts and omissions of Defendant constitute numerous
27 and multiple negligent violations of the TCPA, including but not limited to each
28 and every one of the above-cited provisions of 47 U.S.C. § 227(b).

1 46. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),
2 Plaintiff and Class members are entitled to an award of \$500.00 in statutory
3 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

4 47. Plaintiff and Class members are also entitled to and seek injunctive
5 relief prohibiting such conduct in the future.

6
7 **SECOND CAUSE OF ACTION**
8 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
9 **TELEPHONE CONSUMER PROTECTION ACT**
 47 U.S.C. § 227(B)

10 48. Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 49. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple knowing and/or willful violations of the TCPA, including but not
14 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227(b).

15 50. As a result of Defendant's knowing and/or willful violations of 47
16 U.S.C. § 227(b), Plaintiff and Class members are entitled to an award of \$1,500.00
17 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
18 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

19 51. Plaintiff and Class members are also entitled to and seek injunctive
20 relief prohibiting such conduct in the future.

21
22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, and
24 members of the Classes, the following relief against Defendant:

25 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
26 **THE TCPA, 47 U.S.C. § 227(B)**

- 27 • As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
28 Plaintiff seeks for himself and each ATDS Class member \$500.00 in

1 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
2 227(b)(3)(B).

- 3 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
- 4 conduct in the future.
- 5 • Any other relief the Court may deem just and proper.

6 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF**
7 **THE TCPA, 47 U.S.C. § 227(B)**

- 8 • As a result of Defendant's knowing and/or willful violations of 47 U.S.C.
- 9 § 227(b)(1), Plaintiff seeks for himself and each ATDS Class member
- 10 \$1,500.00 in statutory damages, for each and every violation, pursuant to
- 11 47 U.S.C. § 227(b)(3)(B).
- 12 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
- 13 conduct in the future.
- 14 • Any other relief the Court may deem just and proper.

15 **TRIAL BY JURY**

16 52. Pursuant to the seventh amendment to the Constitution of the United
17 States of America, Plaintiff is entitled to, and demands, a trial by jury.

18 Respectfully submitted this 17th day of August, 2022.

19 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

20 By: /s/ Todd M. Friedman
21 Todd M. Friedman

22 Law Offices of Todd M. Friedman
23 Attorney for Plaintiff
24
25
26
27
28